

F I L E D  
UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

2003 DEC 18 P 1:20 C.A. 03-CV-12497

PREMIER CAPITAL, LLC	)	U.S. DISTRICT COURT
Plaintiff,	)	DISTRICT OF MASS.
	)	
v.	)	
	)	
BEVERLY JOHNSON PENZELL,	)	
d/b/a Law Office of Kris E. Penzell	)	
and BEVERLY JOHNSON	)	
PENZELL, as Personal	)	
Representative of the Estate of	)	
Kris E. Penzell	)	
Defendants.	)	

**ANSWER AND JURY DEMAND OF DEFENDANTS  
TO PLAINTIFF'S COMPLAINT**

The Defendants Beverly Johnson Penzell, d/b/a Law Office of Kris E. Penzell and Beverly Johnson Penzell, as Personal Representative of the Estate of Kris E. Penzell answer the Plaintiff's Complaint as follows:

1. The Defendants admit the allegations in Paragraphs 2, 5, and 6.
2. The Defendants are without knowledge or information sufficient to admit or deny the allegations contained in Paragraphs 1 and 3.
3. The Defendants deny the allegations in Paragraphs 7, 8, 9, 11, and 12.
4. Answering Paragraph 4, the Defendants admit the first sentence, but are without knowledge or information sufficient to admit or deny the allegations contained in the second sentence.
5. Answering Paragraph 10, the Defendants deny that a copy of the Plaintiff's written demand and certified mail receipt bearing a signature is attached as Exhibit A to the

Complaint and to the extent that such a letter was sent, it speaks for itself. The Defendants are without knowledge or information as to whether or not the Plaintiff made written demand of the Defendants for the return of documents.

6. Answering Counts I and II of the Complaint, the Defendants deny the allegations of each and every paragraph contained in these Counts.

**FIRST AFFIRMATIVE DEFENSE**

The Plaintiff's claims are barred by the Statute of Frauds.

**SECOND AFFIRMATIVE DEFENSE**

If the Plaintiff suffered damage or injury as alleged in the Complaint, such damage or injury was caused by the Plaintiff's own negligence which equals or exceeds that of the Defendants, if any.

**THIRD AFFIRMATIVE DEFENSE**

The claims in the Complaint are barred by the statute of limitations.

**FOURTH AFFIRMATIVE DEFENSE**

The Chapter 93A claims are subject to dismissal because the conduct complained of did not occur primarily and substantially in Massachusetts.

**FIFTH AFFIRMATIVE DEFENSE**

The Complaint is barred by the doctrines of waiver and laches.

**SIXTH AFFIRMATIVE DEFENSE**

This Court does not have subject matter jurisdiction over this matter.

**SEVENTH AFFIRMATIVE DEFENSE**

This Court does not have personal jurisdiction over the Defendants.

**EIGHTH AFFIRMATIVE DEFENSE**

The Plaintiff's Complaint fails to state a claim against the Defendants upon which relief can be granted.

**NINTH AFFIRMATIVE DEFENSE**

The Plaintiff is estopped from asserting claims against the Defendant as a result of the Plaintiff's unlawful conduct.

**TENTH AFFIRMATIVE DEFENSE**

The Plaintiff's claims against the Defendants are barred by lack of consideration.

**ELEVENTH AFFIRMATIVE DEFENSE**

The Plaintiff's Complaint against the Defendants is barred by absence of privity of contract.

**TWELFTH AFFIRMATIVE DEFENSE**

If the Plaintiff suffered damage or injury as alleged in the Complaint, such damage or injury was caused by someone or something out of the Defendants' control.

WHEREFORE, the Defendants demand judgment as follows:

- (1) Dismissing the Complaint filed against them with prejudice;
- (2) For attorneys' fees and costs incurred in the defense of this action; and
- (3) For such other further relief as the Court deems meet and just.

**JURY DEMAND**

The Defendants, Beverly Johnson Penzell, d/b/a Law Office of Kris E. Penzell and Beverly Johnson Penzell, as Personal Representative of the Estate of Kris E. Penzell, demand a trial by jury on all issues so triable by a jury.

Dated: December 17, 2003

Respectfully submitted,

BEVERLY JOHNSON PENZELL, D/B/A LAW  
OFFICE OF KRIS E. PENZELL, AND BEVERLY  
JOHNSON PENZELL, AS PERSONAL  
REPRESENTATIVE OF THE ESTATE OF KRIS  
E. PENZELL

By their attorneys,

*Catherine J. Savoie*  
\_\_\_\_\_  
Catherine J. Savoie, BBO# 544599  
Julie C. Easter, BBO# pending  
(admitted on 12/09/03)  
POSTERNAK, BLANKSTEIN & LUND, L.L.P.  
Prudential Tower  
800 Boylston Street  
Boston, MA 02199-8004  
617.973.6100

**CERTIFICATE OF SERVICE**

I, Julie C. Easter, hereby certify that I have served a copy of the Answer and Jury  
Demand by first class mail postage prepaid, this 17 day of December, 2003 upon the  
following:

Thomas J. Morrissey, Esq.  
Hoisington and Morrissey P.A.  
1506 Drift Road  
Westport, MA 02790.

*Julie C. Easter*  
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Julie C. Easter, Esq.